



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/577,118	05/23/2000	Matt Odhner	MS1-517US	3081

22801 7590 07/07/2003

LEE & HAYES PLLC
421 W RIVERSIDE AVENUE SUITE 500
SPOKANE, WA 99201

EXAMINER

CRAIG, DWIN M

ART UNIT	PAPER NUMBER
----------	--------------

2123

DATE MAILED: 07/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/577,118

Applicant(s)

ODHNER ET AL.

Examiner

Dwin M Craig

Art Unit

2123

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,11-28 and 30-33 is/are rejected.
- 7) ☒ Claim(s) 3, 9, 10, 29, 34-37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-37 have been presented for examination. Claims 1, 2, 4-8, 11-28, 30-33 are rejected. Claims 3, 9, 10, 29, 34-37 are objected to.

Specification - Improper Incorporation by Reference

2. The attempt to incorporate subject matter into this application by reference to one application (page 3, specification) is improper because there is insufficient identification so as to direct the Examiner or future potential readers to the referenced material. Furthermore, if the current application issues as a patent before the referenced application, Applicants will be required to physically incorporate the incorporated material into the instant specification. Please refer to section 608.01(p) which recites:

Mere reference to another application, patent, or publication is not an incorporation of anything therein into the application containing such reference for the purpose of the disclosure required by 35 U.S.C. 112, first paragraph. In re de Seversky, 474 F.2d 671, 177 USPQ 144 (CCPA 1973). In addition to other requirements for an application, the referencing application should include an identification of the referenced patent, application, or publication. Particular attention should be directed to specific portions of the referenced document where the subject matter being incorporated may be found. Guidelines for situations where applicant is permitted to fill in a number for Application No. _____ left blank in the application as filed can be found in In re Fouche, 439 F.2d 1237, 169 USPQ 429 (CCPA 1971) (Abandoned applications less than 20 years old can be incorporated by reference to the same extent as copending applications; both types are open to the public upon the referencing application issuing as a patent. See MPEP § 103).

The application, entitled "Capacity Planning For Server Resources" listed on page 3 of the specification, has not been considered by the examiner.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 11 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3.1 As regards dependent **Claim 11** the Examiner is unable to determine what the limitation the Applicant is claiming in regards to what type of data is being recorded and what is generating that particular data.

3.2 As regards dependent **Claim 17** the Examiner is unable to determine what the limitation “...*general server utilization the method further comprising:*” is supposed to be claiming.

Consequently, claims **11 and 17** have not been examined. Where there is a great deal of confusion and uncertainty as to the proper interpretation of the limitations of a claim, it would not be proper to reject such a claim on the basis of prior art. As stated in *In re Steele*, 305 F.2d 859, 134 USPQ 292 (CCPA 1962), a rejection under 35 U.S.C. 103 should not be based on considerable speculation about the meaning of terms employed in a claim or assumptions that must be made as to the scope of the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2123

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Independent Claim 1 and dependent Claims 12-14, 16, 18, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Bhat U.S. patent 5,668,995** in view of **Asawa U.S. Patent 6,108,800**.

4.1 As regards independent Claim 1 the *Bhat* reference discloses a method for deriving server resource utilization estimates, recording server data, including server resource parameter values, using a load simulation tool, specifying a load, and determining the utilization based on that load (**Figures 2A, 2B, Col. 1 Lines 50-67, Col. 2 Lines 1-10, Col. 3 Lines 1-15, Col. 3 Lines 25-38, Col. 3 Lines 56-67, Col. 4 Lines 1-3, Col. 4 Lines 31-57**).

However, the *Bhat* reference does not expressly disclose a server cluster, and recording data during the operation of the server cluster.

The *Asawa* reference discloses a server cluster and recording data during operation of the server cluster (**Figures 1-3, Col. 2 Lines 48-67, Col. 3 Lines 1-9, Col. 8 Lines 32-63**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Asawa* reference because (*motivation to combine*) an artisan would be motivated to know of the techniques disclosed in the *Asawa* reference to ensure that the quality of service that the end users (*customers*) experience is good and to ensure that the users (*customers*) of these servers are able to quickly get E-Mail, transfer files and generally get their network service needs taken care of in a timely manner, (***Asawa Col. 1 Lines 12-60***). The Examiner asserts that Information Technology (IT) service hosting is a very competitive industry and that providing the ability to System Administrators to determine if their

Art Unit: 2123

existing (IT) infrastructure can handle current and projected needs is very critical in being successful in the market place and therefore an artisan would be motivated to learn about the techniques disclosed in the *Asawa* reference.

4.2 As regards dependent **Claims 12, 14 and 18** the *Bhat* reference discloses processor utilization (**Figure 2B Item 52**).

4.3 As regards dependent **Claims 13 and 24** the *Bhat* reference does not expressly disclose deriving general server utilization.

The *Asawa* reference discloses deriving general server utilization (**Col. 8 Lines 32-63**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Asawa* reference because (*motivation to combine*) an artisan would be motivated to know of the techniques disclosed in the *Asawa* reference to ensure that the quality of service that the end users (*customers*) experience is good and to ensure that the users (*customers*) of these servers are able to quickly get E-Mail, transfer files and generally get their network service needs taken care of in a timely manner, (*Asawa Col. 1 Lines 12-60*). The Examiner asserts that Information Technology (IT) service hosting is a very competitive industry and that providing the ability to System Administrators to determine if their existing (IT) infrastructure can handle current and projected needs is very critical in being successful in the market place and therefore an artisan would be motivated to learn about the techniques disclosed in the *Asawa* reference.

4.4 As regards dependent **Claim 16** the *Bhat* reference discloses memory utilization (**Col. 1 Lines 50-67, Col. 2 Lines 1-10**).

4.5 As regards dependent **Claim 25** the *Bhat* reference discloses (**Col. 2 Lines 30-43**).

5. Independent **Claim 28** and Dependent **Claims 30, 31, 32 and 33** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Bhat U.S. patent 5,668,995** in view of **Asawa U.S. Patent 6,108,800** and in further view of **Schwaller et al. U.S. Patent 5,838,919**.

5.1 As regards independent **Claim 28**, the *Bhat* reference discloses a system (**Figure 1**) and a capacity planner (**Col. 2 Lines 30-44**) and a method for deriving server resource utilization estimates, recording server data, including server resource parameter values, using a load simulation tool, specifying a load, and determining the utilization based on that load (**Figures 2A, 2B, Col. 1 Lines 50-67, Col. 2 Lines 1-10, Col. 3 Lines 1-15, Col. 3 Lines 25-38, Col. 3 Lines 56-67, Col. 4 Lines 1-3, Col. 4 Lines 31-57**).

However, the *Bhat* reference does not expressly disclose a server cluster, and recording data during the operation of the server cluster.

The *Asawa* reference discloses a server cluster and recording data during operation of the server cluster (**Figures 1-3, Col. 2 Lines 48-67, Col. 3 Lines 1-9, Col. 8 Lines 32-63**) and filtering of server data (**Figure 3 Item 82 and 84**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Asawa* reference because (*motivation to combine*) an artisan would be motivated to know of the techniques disclosed in the *Asawa* reference to ensure that the quality of service that the end users (*customers*) experience is good and to ensure that the users (*customers*) of these servers are able to quickly get E-Mail, transfer

Art Unit: 2123

files and generally get their network service needs taken care of in a timely manner, (*Asawa Col. 1 Lines 12-60*). The Examiner asserts that Information Technology (IT) service hosting is a very competitive industry and that providing the ability to System Administrators to determine if their existing (IT) infrastructure can handle current and projected needs is very critical in being successful in the market place and therefore an artisan would be motivated to learn about the techniques disclosed in the *Asawa* reference.

The *Bhat* reference does not expressly disclose using a script or having a Network Monitor.

The *Schwaller et al.* reference discloses using a script for Network Performance Testing (**Figure 7 Item 96**) and a Network Monitor (**Col. 1 Lines 53-67, Col. 2 Lines 1-21, Col. 3 Lines 57-67, Col. 4 Lines 1-4**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Schwaller et al.* reference because (*motivation to combine*) the *Schwaller et al.* reference discloses a method to monitor a networks performance using multiple protocols that more accurately model network performance using actual network conditions (**Col. 3 Lines 10-26**). The *Schwaller et al.* reference is classified in the 709/224 Computer network monitoring section of the Classification manual. An artisan of the Networking Technology Art would be motivated to learn about the techniques disclosed in this area of technology. The Examiner asserts that this area of Information Technology is very competitive and therefore an artisan in this area of art would be motivated to improve the accuracy of the Network Monitoring and performance evaluation tools being used to measure a particular Network.

Art Unit: 2123

5.2 As regards dependent **Claim 30** the *Bhat* reference discloses storing data in memory (**Figure 1, Col. 2 Lines 31-43**).

5.3 As regards dependent **Claim 31** the *Bhat* reference does not expressly disclose scripts.

The *Schwaller et al.* reference discloses using a script (**Col. 10 Lines 28-67, All of Columns 11-26**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Schwaller et al.* reference because (*motivation to combine*) the *Schwaller et al.* reference discloses a method to monitor a networks performance using multiple protocols that more accurately model network performance using actual network conditions (**Col. 3 Lines 10-26**). The *Schwaller et al.* reference is classified in the 709/224 Computer network monitoring section of the Classification manual. An artisan of the Networking Technology Art would be motivated to learn about the techniques disclosed in this area of technology. The Examiner asserts that this area of Information Technology is very competitive and therefore an artisan in this area of art would be motivated to improve the accuracy of the Network Monitoring and performance evaluation tools being used to measure a particular Network.

5.4 As regards dependent **Claim 32** the *Bhat* reference does not expressly disclose simulation of a cluster of servers.

The *Asawa* reference discloses the simulation of a cluster of servers (**Figures 1-3, Col. 8 Lines 39-63**).

Art Unit: 2123

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Asawa* reference because (*motivation to combine*) an artisan would be motivated to know of the techniques disclosed in the *Asawa* reference to ensure that the quality of service that the end users (*customers*) experience is good and to ensure that the users (*customers*) of these servers are able to quickly get E-Mail, transfer files and generally get their network service needs taken care of in a timely manner, (*Asawa Col. 1 Lines 12-60*). The Examiner asserts that Information Technology (IT) service hosting is a very competitive industry and that providing the ability to System Administrators to determine if their existing (IT) infrastructure can handle current and projected needs is very critical in being successful in the market place and therefore an artisan would be motivated to learn about the techniques disclosed in the *Asawa* reference.

5.5 As regards dependent **Claim 33** the *Bhat* reference does not expressly disclose scripts and simulating clustered servers.

As regards the limitation of running scripts (*see paragraph 5.3 above.*)

As regards the limitation of simulating clusters of servers (*see paragraph 5.4 above.*)

6. Independent **Claim 26** and dependent **Claim 27** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Schwaller et al. U.S. Patent 5,838,919** in view of **Asawa U.S. Patent 6,108,800**.

6.1 As regards independent **Claim 26** the *Schwaller et al.* reference discloses a simulation tool (**Col. 1 Lines 36-52, Col. 7 Lines 63-67, Col. 8 Lines 1-27**), a user interface

Art Unit: 2123

(Col. 27 Lines 23-38), and a monitor (Col. 1 Lines 53-67, Col. 2 Lines 1-21, Col. 3 Lines 57-67, Col. 4 Lines 1-4), and test scripts which are run and observed with the monitor (Col. 8 Lines 39-67, All of Columns 9-26).

However, the *Schwaller et al.* reference does not expressly disclose a server cluster and using a filter.

The *Asawa* reference discloses a server cluster (Col. 8 Lines 33-63), and using a filter (Figure 3 Items 80 and 82).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Schwaller et al.* reference with the *Asawa* reference because (*motivation to combine*) an artisan would be motivated to know of the techniques disclosed in the *Asawa* reference to ensure that the quality of service that the end users (*customers*) experience is good and to ensure that the users (*customers*) of these servers are able to quickly get E-Mail, transfer files and generally get their network service needs taken care of in a timely manner, (*Asawa Col. 1 Lines 12-60*). The Examiner asserts that Information Technology (IT) service hosting is a very competitive industry and that providing the ability to System Administrators to determine if their existing (IT) infrastructure can handle current and projected needs is very critical in being successful in the market place and therefore an artisan would be motivated to learn about the techniques disclosed in the *Asawa* reference.

6.2 As regards dependent Claim 27 the *Schwaller et al.* reference discloses modifying scripts and observing the results (Figure 7, Col. 34 Lines 28-42, Col. 36 Lines 26-38, Col. 37 Lines 60-67).

Art Unit: 2123

7. Dependent Claims 2, 4, 15, 19 and 20 are being rejected under 35 U.S.C. 103(a) as being unpatentable over **Bhat U.S. patent 5,668,995** in view of **Asawa U.S. Patent 6,108,800** and in further view of **Datta et al. U.S. Patent 6,209,033**.

7.1 As regards the limitations in Independent Claim 1 see paragraph 4.1 above.

7.2 As regards dependent Claim 2, the *Bhat* reference does not expressly disclose displaying server resource estimates and recommending a plan to optimize processing of the specified load.

The *Datta et al.* reference discloses displaying server resource estimates (**Figure 7**), and recommending a way to optimize the network (**Figure 6 Item 64**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Datta et al.* reference because (*motivation to combine*) the *Datta et al.* reference discloses a method of analyzing alternative configurations (**Col. 2 Lines 48-52**).

7.3 As regards dependent Claim 4 the *Bhat* reference discloses no-volatile memory (**Figure 1 Item 14**).

7.4 As regards dependent Claims 15, 19 and 20 the *Bhat* reference does not expressly disclose calculating bandwidth utilization.

The *Datta et al.* reference discloses calculating bandwidth utilization (**Figure 9, Col. 8 Lines 60-67, All of Columns 9-12, Col. 13 Lines 1-26**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Datta et al.* reference because

Art Unit: 2123

(*motivation to combine*) the *Datta et al.* reference discloses a method of analyzing alternative configurations (Col. 2 Lines 48-52).

8. Dependent Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bhat U.S. patent 5,668,995 in view of Asawa U.S. Patent 6,108,800 and in further view of “NETCAP: A tool for the Capacity Planning of Ethernet LANS” by Lazarus Vekiarides and David Finkel here after referred to as the *Vekiarides et al.* reference.

8.1 As regards the limitations of independent Claim 1 see paragraph 4.1 above.

8.2 As regards dependent Claims 21-23 the *Bhat* reference does not expressly disclose statistical analysis of processor, bandwidth and memory utilization.

The *Vekiarides et al.* reference discloses statistical analysis of processor, bandwidth and memory utilization (All six pages including Figure 3-1).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Vekiarides et al.* reference because (*motivation to combine*) the *Vekiarides et al.* reference offers a method to increase accuracy in modeling network resource utilization (*Vekiarides et al.* reference, Section 1.2 System Model).

9. Dependent Claims 5, 6, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bhat U.S. patent 5,668,995 in view of Asawa U.S. Patent 6,108,800 and in further view of Schwaller et al. U.S. Patent 5,838,919.

9.1 As regards independent Claim 1 see paragraph 4.1 above.

Art Unit: 2123

9.2 As regards dependent **Claim 5** the *Bhat* reference does not expressly disclose running scripts.

The *Schwaller et al.* reference discloses running scripts (**Figure 7 Items 94, 96, 98, Col. 8 Lines 39-67, all of Columns 9-26**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Schwaller et al.* reference because (*motivation to combine*) the *Schwaller et al.* reference discloses a method to monitor a networks performance using multiple protocols that more accurately model network performance using actual network conditions (**Col. 3 Lines 10-26**). The *Schwaller et al.* reference is classified in the 709/224 Computer network monitoring section of the Classification manual. An artisan of the Networking Technology Art would be motivated to learn about the techniques disclosed in this area of technology. The Examiner asserts that this area of Information Technology is very competitive and therefore an artisan in this area of art would be motivated to improve the accuracy of the Network Monitoring and performance evaluation tools being used to measure a particular Network.

9.3 As regards dependent **Claims 6 and 7** the *Bhat* reference does not expressly disclose recalculating the load when the number of users is increased or running a script.

As regards the limitation of running a script (*see paragraph 9.2 above.*)

The *Asawa* reference discloses recalculating the load when the number of users is changed (**Figure 2 Item 66**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Asawa* reference because (*motivation to*

Art Unit: 2123

combine) an artisan would be motivated to know of the techniques disclosed in the *Asawa* reference to ensure that the quality of service that the end users (*customers*) experience is good and to ensure that the users (*customers*) of these servers are able to quickly get E-Mail, transfer files and generally get their network service needs taken care of in a timely manner, (*Asawa Col. 1 Lines 12-60*). The Examiner asserts that Information Technology (IT) service hosting is a very competitive industry and that providing the ability to System Administrators to determine if their existing (IT) infrastructure can handle current and projected needs is very critical in being successful in the market place and therefore an artisan would be motivated to learn about the techniques disclosed in the *Asawa* reference.

9.4 As regards dependent **Claim 8** the *Bhat* reference discloses maximum load (**Col. 5 Lines 14-24**).

Allowable Subject Matter

10. **Claims 3, 9, 10, 29 and 34-37** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwin M Craig whose telephone number is 703 305-7150. The examiner can normally be reached on 9:00 - 5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Teska can be reached on 703 305-9704. The fax phone numbers for the

Art Unit: 2123

organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 305-3900.

DMC
June 29, 2003


HUGH JONES Ph.D.
PRIMARY PATENT EXAMINER
TECHNOLOGY CENTER 2100